

Panaji, 25th September, 2003 (Asvina 3, 1925)

SERIES II No. 26

OFFICIAL GAZETTE

GOVERNMENT OF GOA



SUPPLEMENT

No. 4

GOVERNMENT OF GOA

Department of Labour

Order

No. CL/Pub-Awards/2001/2073

The following Award dated 25-4-2001 in Reference No. IT/54/90 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 14th May, 2001.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/54/90

Workmen, ... Workman/Party I
Rep. by Goa Mine Workers Union,
Vasco-da-Gama, Goa.

V/s

M/s. Shree Gajanan Industries, ...Employer/Party II
Xeldem - Quepem, Goa.

Workman/Party I-Represented by Adv. Shri T. Pereira.
Employer/Party II- Represented by Adv. Shri A. Luis.

Panaji, dated : 25-4-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 15th November, 1990 bearing No. 28/62/90-LAB referred the following dispute for adjudication of this Tribunal.

"Whether the demand of the workmen employed by the management of M/s. Shree Gajanan Industries, Xeldem, for 20% bonus for the Accounting years 1986-87, 1987-88 and 1988-89 is justified?

If not, to what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/54/90 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workmen Party I (for short, "Union" filed statement of claim at Exb. 7. The facts of the case in brief as pleaded by the union are that the Employer-Party II (for short, "employer") runs the business of crushing Basalt stones which are extracted by the employer from their nearby quarry at Guddemol - Antoriem, Savordem-Goa. That for the above said business the employer has two stone crushers units comprising of entire set of machinery, one situated at the site of the quarry itself and the other at Xeldem-Quepem, Goa. That the employer transfers the Basalt stones from the quarry site to the stone crusher unit at Xeldem - Goa, by trucks which are owned and operated by the employer as a part and parcel of his business. That the workers employed by the employer at the quarry site as well as at the stone crusher units joined the union namely the Goa Mine Workers Union in the month of April 1990

and the employer was informed about this fact and they were requested to grant fringe benefits, and all mining facilities and equipment to the workmen, as well as pay bonus to the workmen at the rate of 20% for the years 1986-87, 1987-88 and 1988-89. The union informed the Dy. Labour Commissioner, Margao, Goa, about their problems and difficulties and the Dy. Labour Commissioner vide letter dated 6-4-90 asked the employer to attend before him on 17-4-90 at 3.30 p.m. along with various records including profit and loss account and balance sheet for the accounting years 1987-88 and 1988-89. That in the discussion held before the Dy. Labour Commissioner, Margao on 17-4-89 the employer stated that they were unable to produce Profit and Loss Account and Balance Sheet for the accounting years 1986-87, 1987-88 and 1988-89 because the accounts were not finalised by their Chartered Accountant and stated that the same would be produced in the first week of June, 1990, and also took strong objection for the formation of union, saying that it was illegal. That subsequently the representatives of the union failed to attend before the Dy. Labour Commissioner and hence due to non co-operative attitude adopted by them the conciliation ended in failure. The union contended that the employer is in the business since the year 1976 and the said business is a highly profitable business since there is heavy demand for crushed basalt stones for various construction purposes in Goa. The union contended that the employer paid bonus to the workers only once, that is, in the year 1983 and thereafter the employer did not comply with statutory duty to pay bonus as per Payment of Bonus Act. The workmen contended that the employer has made huge profit during the accounting years 1986-87, 1987-88 and 1988-89 which is sufficient for paying 20% bonus to the workmen for each of the said three accounting years. The union thereafter claimed that all the workers on the roll of the employer during the said accounting years 1986-87, 1987-88 and 1988-89 are entitled to bonus at the rate of 20%. Subsequently the union submitted the list of the workers employed by the employer for crushing operations.

3. The employer filed written statement at Exb. 13. The employer admitted that they are the owner of a Quarry at Guddemol, Sanvordem-Goa and that they have also two crushing units, one at Guddemol and other at Xeldem. The employer admitted that the Basalt stones are extracted from their quarry and they are crushed at the said two units. The employer stated that the lease for extracting stones from quarry expired in the year 1987 and the application for renewal of the lease was pending before the Directorate of Industries and Mines and as such there was absolutely no

extraction from 31-10-87 for crushing. The employer stated that they used to purchase raw material in open market thereby incurring losses. The employer stated that their establishment are registered under the Goa, Daman and Diu Shops and Establishments Act as small scale industries and Annual Reports are filed before the concerned authorities. The employer admitted that they received a communication signed by 30 workers informing that the workers had joined All Goa General Employees Union (CITU) and that they have authorised the union to deal with the Management regarding their interests. The employer stated that the list submitted before this Tribunal contains 21 names of the workers whereas the list submitted in the reference before the Central Industrial Tribunal No. 2 at Bombay contains 44 names of workers and the names of the workers mentioned in the list submitted before the Asst. Labour Commissioner on 4-10-90 do not tally with the names given in the list submitted before this Tribunal. The employer stated that the crushing units were re-started by the help of labour brought by one Shri Daudsab and his wife Saleema who are the labour contractors-cum-workmen. The employer stated that they attended the first conciliation meeting on 17-4-1990 and put up their case which was recorded in the minutes of that day and thereafter the conciliation proceedings were not attended due to personal reasons. The employer stated that before the Dy. Labour Commissioner it was stated that the alleged workers were not employed by the employer and they were employed by the Labour contractors and hence no union could be formed under Trade Unions Act. The employer stated that they have a lease for extracting granite metal (Raw Material) at Guddemol close to the crusher and since the extraction of granite comes under the Minor Minerals Act, the quarry and the crusher at Guddemol come within the jurisdiction of Central Government and/or Central Industrial Tribunal, Bombay and the other crusher situated at Xeldem comes within the jurisdiction of the State Government and/or within the jurisdiction of this Tribunal. The employer stated that for the period 1986-87 the work of crushing was done by Shri Mader, Shri Devindra, Shri Girijawa, Shri Chand Bassawa and Shri Daudsab; for the period 87-88 by Shri Devappa, Smt. Gangava, Smt. Nilava, Shri Shivappa and Smt. Pullava; for the period 88-89 by Shri Hanumant, Shri Fakirappa, Smt. Suganda, Smt. Medival, Shri Burramappa, Shri Bassuraj and Smt. Kastulava. The employer stated that they were relying on attendance register from 10-10-83 to 28-10-89 and register of wages Form X rule 29(i) for the period 1-10-84 to 24-6-89. The employer denied that they had made huge profits and stated that infact they had incurred substantial losses because from

the year 1987 they had no quarry to extract stones and hence had to obtain raw material for the purpose of crushing and at times had to buy the same from other quarries. The employer denied that any bonus was paid to the workers in the year 1983 and stated that infact the Payment of Bonus Act did not apply to the employer. The employer stated that at the instigation of the union some unknown persons formed unlawful assembly and took key and custody of five trucks causing loss of Rs. 2,500/- per day and then caused damages to the trucks and only when the civil suit was filed the trucks were returned as per the order of the court. The employer stated that the workmen on whose behalf the union has claimed relied are not its workers. The employer denied that the workmen are entitled to any relief as claimed. The union thereafter filed rejoinder at Exb. 14.

4. On the pleadings of the parties following issues were framed at Exb. 15:

1. Does Party II prove that the Tribunal has no jurisdiction to decide this reference as the same does not fall within the ambit of clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act 1947 ?
2. If not, does Party I prove that he is entitled to bonus at 20% for the accounting years 1986-87, 1987-88, 1988-89 ?
3. To what reliefs Party I- Workmen are entitled ?
4. What award or order ?
5. My findings on the issues are as follows:

- | | |
|-------------|-------------------------|
| Issue No. 1 | : In the negative. |
| Issue No. 2 | : In the negative. |
| Issue No. 3 | : As per para 13 below. |
| Issue No. 4 | : As per order below. |

REASONS

6. *Issue No. 1:* The employer raised the contention in the written statement that the reference is bad in law because it does not fall within the frame work of clause (d) of Sub Section (1) of Sec. 10 of the Industrial Disputes Act, 1947. Section 10(1)(d) of the Industrial Disputes Act, 1947 lays down that where the appropriate Government is of the opinion that industrial dispute exists or is apprehended it may at any time by order in writing refer the dispute or any matter appearing to be connected with or relevant to the dispute, whether it relates to any matter specified in the second schedule or the Third Schedule to a Tribunal for adjudication. Thus it can be

seen that the above provision empowers the State Government to refer the industrial dispute which falls in the second schedule or the third schedule to the Industrial Tribunal for adjudication. In the present case the dispute which has been raised according to the union is on behalf of the workmen who are employed at the stone crushing unit of the employer situated at Xeldem-Quepem, Goa. The said dispute is pertaining to the demand of the workmen for 20% bonus. This dispute is specified in the third schedule. This being the case the State Government, that is the Govt. of Goa, had the authority to refer the present dispute to this Tribunal. Since it the employer who wanted to oust the jurisdiction of this Tribunal to decide the reference, the burden was on the employer to show how the reference did not fall within the frame work of clause (d) of Sub-Section 1 of Section 10 of the Industrial Disputes Act, 1947. No evidence has been led by the employer to prove the same nor any submissions have been advanced by the employer in this respect. Thus the employer has failed to discharge the burden cast on it. I, therefore hold that the employer has failed to prove that the reference is bad in law or that the same is not maintainable. Hence, I answer the issue No. 1 in the negative.

7. *Issue No. 2:* The claim which has been made by the union on behalf of the workmen is for Payment of Bonus at the rate of 20% for the accounting years 1986-87; 1987-88 and 1988-89. Both the parties, that is, the union as well as the employer have filed their written submissions in addition to the oral submissions made by them. I have carefully considered the said oral as well as the written submissions. The employer has contended that the workmen on whose behalf the dispute for bonus is raised by the union are not its workers. The union has examined three witnesses and the employer has examined one witness by name Apolonio Luis who is the Power of Attorney of Shri Gajanan Naik, the Proprietor of the employer establishment. The union's first witness Mr. Shantaram Naik has stated that he was working with the employer as a crusher operator and he was paid Rs. 700/- p. m. He has stated that besides him 21 laboures were working at the crusher unit, and they were paid Rs. 20/- per day. He produced statement containing the names of 21 workers including himself at Exb. 20 mentioning the designation of each worker, average monthly salary drawn by each of them and the amount of bonus payable to each worker at the rate of 20%. In his cross examination he stated that the statement Exb. 20 was prepared by him. He denied the suggestion that he never worked as crusher operator and that he is trying to get his name entered as an employee. The most of the part of the cross examination of Shri Shantaram Naik

is irrelevant. The employer has not disputed nor denied the statement Exb. 20 prepared by the said witness giving the names of the workers and their other details. The second witness examined by the union is Shri Anand Betkikar, who is the General Secretary of the union. He stated that about 21 or 22 workers are concerned in the present reference. He stated that the workers had claimed bonus for 3 years at the rate of 20% and there were conciliation proceedings before the Dy. Labour Commissioner and as there was no settlement failure report was sent to the Government. He produced of the conciliation proceedings at Exb. 22 colly. In his cross examination he denied the suggestion that the workers involved in the present reference are not the workers of the employer. He stated that he does not remember the date on which the work was stopped. He denied the suggestion that the workers obstructed the work at Xeldem. He denied the suggestion that the workers involved in the present reference are not entitled to bonus because they are not the workers of the employer. He denied the suggestion that the said workers were engaged by the Contractor. The third witness examined by the union is Shri Ravindra Zambaulikar. He stated that he was working with the employer as driver and that he was working at both the establishments. He stated that there were about 20 workers and one crusher operator who used to do the work of loading. He stated that Mr. Raghuvir Naik was the Manager at Guddemol and Manda Bandekar at Xeldem and they were in charge of the respective establishments. In his cross examination he denied the suggestion that one Mr. Francis Xavier Antao asked him to join the duties on 5-5-90. He denied the suggestion that he and other workers were giving support to the workers of Mukta Plastics or that they had claimed bonus to support the strikers of Mukta plastics. The most of the part of cross examination of these witnesses is also irrelevant as it is not relating to the issue involved in the present case. The employer examined the Power of Attorney Shri Apolonio Luis. He admitted that the employer carries on the business of granite stone crushing at Xeldem, Quepem-Goa. He stated that the lease in respect of the quarry belonging to the Government expired in the year 1987 and the same was not renewed, and since then the raw material, that is granite, could not be extracted. He stated that in April 1990 the Director of Industries and Mines orally permitted the employer to extract granite from the quarry and accordingly the employer asked the ex-contractors Mani Gauder, Gajan Gad, and one Nabian to start the work but before the work could be started a notice was served by their workers stating that the workers had formed an union and the copy of the said notice was sent to Dy. Labour Commissioner, Margao, and to the

Labour Commissioner. He stated that in the meeting fixed by the Dy. Labour Commissioner, Margao on 17-4-90 it was brought to his notice that the workers were the Contract Labourers and they were paid wages on 7-4-90 according to the piece work. He stated that the employer was not paying bonus to the workers and the employer was out of business from 1986 to 1989 as the quarry was not operated. He stated that the workers who have claimed bonus are not the workers of the employer. In his cross examination he admitted that in para 8 of the written statement the employer has admitted that the work of crushing was done for the period 1986-87, 1987-88 and 1988-89 and that names of the persons who did the work were mentioned. He stated that the said persons were doing the work of crushing granite was already extracted at the quarry as well as which were brought for crushing from other persons. He admitted that the letter dated 6-4-90 Exb. 22 colly was received by the employer from the Dy. Labour Commissioner, and he also admitted the minutes of the meeting dated 17-4-90 Exb. 22 colly. He stated that the employer did not produce the documents mentioned in the letter dated 6-4-90 because the employer did not agree that the applicants who had made the application were its workers and also because the Dy. Labour Commissioner had no jurisdiction to call for the records in respect of the contractors or workers of the quarry situated at Guddemoll. He stated that Bonus Act is not applicable to the employer and therefore the records required to be maintained under the said Act are not maintained. He admitted that the employer is maintaining the Profit and Loss account as well as muster roll, wage records etc.

8. The employer has tried to contend that the workers whose names are mentioned in the list Exb. 20 are not the workers of the employer. However, the said list Exb. 20 was neither disputed nor denied by the employer when it was produced by the union's witness Shri Shantaram Naik. Also, the employer's witness Mr. Apolonio Luis in his cross examination admitted that from the said list Exb. 20, Salima Bi, Daud Saab, Bibijan and Shoba were the workers of the employer. The employer's witness stated in his cross examination that the employer is maintaining muster roll, wage records etc. The union has produced the minutes of the meeting dated 17-4-90 recorded by the Dy. Labour Commissioner, Margao. These minutes are admitted by the employer's witness Mr. Apolonio Luis in his cross examination. In these minutes it is recorded that the employer's representative had stated that the registers of stone quarry and stone crusher are separately maintained and annual returns are properly submitted to the concerned authorities. This shows that all the records pertaining

to the employment of the workers at the stone crusher unit were with the employer. The employer ought to have produced the said records, particularly the muster roll and wage register which would have proved whether the list of the workers Exb. 20 produced by the union is correct or not. The employer however did not do so. The other stand which the employer took is that the workers involved in the present reference were employed by the Contractor, as can be seen from the cross examination of the union's witness Shri Anand Betkikar. However, the employer did not examine any contractor to prove the same nor produced any other oral or documentary evidence in this respect. This being the case there is no reason to doubt the list of workers involved in the present reference produced at Exb. 20. The employer's witness Shri Apolonio Luis stated in the course of his cross examination that the Bonus Act is not applicable to the employer's establishment and therefore the records required to be maintained under the said Act are not maintained. This contention of the employer cannot be accepted. The employer has filed written statement in the present case. This written statement is in answer to the claim statement filed by the union. In the written statement the employer stated that the Payment of Bonus Act is not applicable to the establishment of the employer because the workers did not work for the employer nor any person has worked for the stipulated days as required under the Bonus Act. In the same written statement the employer had stated that they rely on the attendance register from 10-10-1983 to 28-10-1989 and the register of wages Form X rule 29 (i) for the period 1-10-1984 to 24-6-89. However the employer never produced the above documents. Also, the union has produced the letter dated 6-4-90 Exb. 22 colly written by the Dy. Labour Commissioner, Margao, to the employer on non-payment of bonus to the workers employed in their establishment. This letter is admitted by the employer's witness Mr. Apolonio Luis. In the said letter, besides other documents, the employer was asked to produce Register in Form A, B & C maintained under Payment of Bonus Act for the Accounting Year 1987-88 and 1988-89 on 17-4-90. The minutes of the meeting dated 17-4-90 Exb. 22 colly which are admitted by the employer show that the employer never disputed that the Bonus Act is applicable to them. The employer also did not deny that they are maintaining register in Form A, B and C under Payment of Bonus Act. On the contrary the said minutes show that the employer had agreed to produce the said register on the next date of hearing. In the absence of any evidence from the employer the evidence led by the union is liable to be accepted. The evidence led by the union shows that the employer's establishment employed more than 20 employees and also that it is factory.

This being the case the Bonus Act is applicable to the employer's establishment. Therefore there is no substance in the contention of the employer that workers involved in the present reference are not their workers or that the Bonus Act is not applicable to them.

9. The union has claimed 20% bonus for the accounting years 1986-87, 1987-88 and 1988-89. The employer has tried to set up a case in their evidence that the granite could not be extracted since the year 1987 because the lease in respect of the quarry had expired and that therefore the work of crushing was not going on at the crusher unit. However, in the written statement the employer has admitted that the work of crushing was done for the period 1986-87, 1987-88 and 1988-89. The employer's witness has stated that the work of crushing granite was being done in respect of the granite which was extracted from the quarry as well as which were brought by other persons. This means that even if it is presumed that no granite was extracted from the quarry because of the expiry of the lease, still work of the crushing was not affected because granite brought by other persons were crushed at the unit. As per the Bonus Act the minimum bonus payable is at the rate of 8.33%. Since the union claimed bonus at the rate of 20%, the burden was on the union to prove that the employer had made sufficient profit in the above said accounting years and there was allocable surplus. There is absolutely no evidence either documentary or oral from the union on this aspect. Mere statement by the witnesses that the employer had made profit is not enough. The necessary details are required to be given so that the allocable surplus can be worked out.

10. After the evidence of the employer was recorded the case was fixed for final arguments. At this stage the union filed an application dated 5-9-95 for directing the employer to produce the audited accounts for the accounting years 1986-87, 1987-88 and 1988-89. After hearing the parties by order dated 16-1-96 the employer was directed to produce the audited accounts for the above said period. The employer produced the Profit and Loss Account in respect of the above said accounting years duly Certified by their Chartered Accountant at Exb. 31 colly. However, the Profit and Loss Account which were produced were not audited. On the application filed by the union, by order dated 13-12-96 the employer was directed to get the accounts audited. The employer vide application dated 4th April 1997 expressed their inability to get the accounts audited because their files pertaining to the accounts were destroyed in the fire in May 1991. The employer produced the copy of the FIR lodged with the police in this respect. Thereafter the union filed an application dated

29-4-97 praying that its earlier request made in the application dated 7-6-96 for appointing an auditor at the cost and expenses of the union to get the accounts of the employer audited be granted. By order dated 27-10-97 the said request of the union was rejected as no purpose would have been served by appointing an auditor because the document namely the FIR produced by the employer showed that the records pertaining to the accounts of the employer were destroyed in a fire in the month of May 1991.

11. Sec. 25 (i) of the Payment of Bonus Act, 1965 provides for production of the Audited Accounts of the employer. The said section further provides that when the audited accounts are produced the provisions of Sec. 23 (i) of the said Act shall apply. As per 23 (i) of the Act, when the audited accounts are produced by the employer before an authority, the said authority may presume the statements and particulars contained in the said accounts to be accurate and it shall not be necessary for the employer to prove the accuracy of the statements and particulars by filing affidavit or by any other mode. This shows that it is not necessary that the employer has to produce only the audited accounts and not unaudited accounts. The only difference is that if the audited accounts are produced the correctness of the accounts are presumed and the employer need not go for further proof of the accounts. In the present case the employer had examined the Power of Attorney, Mr. Apolonio Luis. Nothing has been brought out by the union in his evidence regarding the profit made by the employer in the said three accounting years. The said witness was not cross examined on this aspect at all. Infact the union ought to have asked the employer to produce the Profit and Loss Account for the above said accounting years in the course of the evidence of the employer and after the production of the said accounts if the union was doubting the correctness of the said accounts or wanted to dispute the entries in the said accounts wanted clarifications or explanations the same ought to have been done by putting the questions to the witness in his cross examination. This would have given the employer the opportunity to prove the correctness of the said accounts. Having not done so, the union cannot be allowed to raise the objections to the Profit and Loss accounts produced by the employer at the instance of the union. In the absence of any evidence to the contrary, the Profit and Loss Accounts produced by the employer which are certified by the Chartered Accountant are liable to be accepted.

12. As per the Profit and Loss Account produced by the employer for the accounting year 1986-87 the gross profit for the purposes of bonus comes to Rs. 4,50,683.15. The deductions which are liable to be made under Sec. 6 and the third schedule comes to Rs. 4,25,957.80. Thus

the available surplus worked out comes to Rs. 24,725.35 and the Allocable surplus comes to Rs. 14,835.20 which is 60% of the available surplus as per Sec. 2 (4) (b) of the Bonus Act. The total salaries and wages paid during the said accounting year as per the Profit and Loss Account is 2,79,154.10. The amount of minimum bonus payable on the said wages at the rate of 8.33% works out to Rs.23,253/- which is more than the allocable surplus as worked out above. Accordingly for the accounting year 1986-87 the bonus payable is the minimum which is 8.33% of the wages.

As per the profit and loss account produced by the employer for the accounting year 1987-88 the gross profit for the purpose of bonus comes to Rs. 407619/-. The deductions which are liable to be made under Sec. 6 and third schedule comes to 356705/-. Thus the available surplus worked out comes to Rs. 50,913/- and the allocable surplus comes to Rs. 30,548/- which is 60% of the available surplus as per Sec. 2 (4) (b) of the Bonus Act. The total salaries and wages paid during the said accounting year as per the profit and loss account is Rs. 313327/-. Hence the amount of bonus payable is 9.75% of the wages since the allocable surplus is more than the minimum bonus payable.

As per the profit and loss account produced by the employer for the accounting year 1988-89, the gross profit for the purpose of Bonus comes to Rs. 3,52,562/-. The deductions which are liable to be made under Sec. 6 and third schedule comes to Rs. 2,81,073.88/- Thus the available surplus worked out comes to Rs. 71,489/- and the allocable surplus comes to Rs. 42,893/- which is 60% of the available surplus as per Sec. 2 (4) (b) of the Bonus Act. The total salaries and wages paid during the said accounting year as per the profit and loss account is Rs. 4,26,871/-. Hence the amount of bonus payable is 10% of the wages since the allocable surplus is more than the minimum bonus payable. In view of the above I hold that the union has failed to prove that the workers are entitled to 20% bonus for the accounting years 1986-87, 1987-88 and 1988-89. I, therefore answer the issue No. 2 in the negative.

13. Issue No. 3: In the present case the claim of the union for bonus was at the rate of 20% for the accounting years 1986-87, 1987-88, 1988-89. It has been held by me that the union has failed to prove that the workers are entitled to bonus at the rate of 20% for the said accounting years. However it does not mean that the

workers are not entitled to bonus at all. While deciding the issue No. 2, the bonus payable to the workers for the said accounting years has been worked out. It has been held by me that for the accounting years 1986-87 the bonus payable is at the rate of 8.33%; for the accounting year 1987-88 it is at the rate of 9.75% and for the accounting year 1988-89 it is at the rate of 10%. I, therefore hold that the workers of the employer are entitled to bonus at the rate of 8.33% for the accounting year 1986-87; at the rate of 9.75% for the accounting year 1987-88 and at the rate of 10% for the accounting year 1988-89, and I answer the issue No. 3 accordingly.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the demand of the workmen of the management of M/s. Shree Gajanan Industries, Xeldem, for the 20% bonus for the accounting years 1986-87, 1987-88 and 1988-89 is not justified. I hold that the workmen are entitled to 8.33% bonus for the accounting year 1986-87; 9.75% bonus for the accounting year 1987-88 and 10% bonus for the accounting year 1988-89.

No order as to costs. Inform the Government Accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/29/96-LAB

The following Award dated 25-9-2001 in reference No. IT/39/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Charles D'Souza, Joint Secretary (Labour).

Panaji, 18th October, 2001.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/39/96

Workman rep. by the President,
Kamgar Sabha,
Kennedy House, 4th floor,
Goregaonkar Road,
Bombay-400007.

Workmen/Party I

V/s

M/s. Hindustan Ciba Geigy Ltd.
Post Box I, Corlim,
Ilhas Goa.

Employer/Party II

Workman/Party I Shri C. A. Rodrigues present in person.

Employer/Party II represented by Adv. Shri C. Pawaskar.

Panaji, Dated: 20-9-2001.

AWARD-PART-II

In exercise of the powers conferred by Clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order dated 26-6-96 bearing No. 28/29/96-LAB referred the following dispute for adjudication of this Tribunal.

1. Whether the action of the management of M/s. Hindustan Ciba-Geigy Ltd., Corlim, in terminating the services of the following workman by way of dismissal with effect from the dates mentioned against their respective names is legal and justified?

- | | |
|-------------------------------|------------|
| (1) Shri C. A. Rodrigues | 5-7-1994. |
| (2) Shri T. B. Sawant | 5-7-1994. |
| (3) Shri Vinod P. Kalangutkar | 5-7-1994. |
| (4) Shri P. S. Paidarkar | 5-7-1994. |
| (5) Shri V. G. S. Pissurlekar | 5-7-1994. |
| (6) Shri Sambhaji Kamble | 18-7-1995. |

(2) If not, to what relief the workmen are entitled?

2. On receipt of the reference a case was registered under No. IT/39/96 and registered A. D. notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Party-I/Union (for short Sabha) filed statement of claim at Exb. 4. The case of the Sabha in short is that the workman of the Party II/employer (for short employer) joined the sabha i. e. the Kamgar Sabha to the

annoyance and embarrassment of the employer because earlier the internal union were always acting as per the directions and dictation of the employer. As the service conditions required drastic revision, Charter of demands was submitted by the Sabha to the employer vide letter dated 11-5-93. The employer held negotiations with Mr. J. Hubert, the General Works Manager but after he was replaced by Mr. Lehmann, the negotiations stopped because he adopted anti-union and anti-labour stance as a result of which the confrontation between the management and the workman became inevitable. The employer chargesheeted six of the Sabha's Committee members by way of victimisation by charges set dated 6-12-93. The said workman filed reply denying the Charges alleged against them and called upon the employer to withdraw the suspension order and the chargesheets. The employer with the help of government officials tried to pressurise the workman to break away from the Sabha and they were promised that in case they did so their suspension orders would be withdrawn and the charges levelled against them would be dropped. However the workman refused to pressurise by the employer and the government officials. The workman thereafter were informed by letters dated 18-3-94 that the enquiry had been held against them and the enquiry officer had submitted his findings. The copies of the findings were sent to the workman along with the said letters and they were asked to submit their representations on the findings within 7 days from the receipt of the said letter. The workman by their letter dated 28-3-94 informed the employer that the findings of the enquiry officer were not acceptable to them. About 3 months thereafter the employer by letter dated 16-6-94 informed the workman that the findings of the enquiry officer were accepted by the management and the employer had decided to terminate their services and subsequently by letters dated 5-7-94 the services of the workman were terminated. The employer thereafter in order to create further fear in the minds of the workers suddenly declared illegal and unjustified lock-out. The Sabha by letter dated 9-11-95 demanded reinstatement of the said workman and when no reply was received from the employer the Sabha sent the matter for conciliation by letter dated 25-2-96. The conciliation proceedings failed due to the victimisation attitude of the employer. Though the employer alleged that the misconducts were grave in nature and therefore the services of the workman were terminated, one of the workman Shri S. U. G. Dessai, who resigned from Sabha after his services were terminated was taken back in service and was also given sufficient money to pay the loan amount taken from the Sabha. This fact was brought to the notice of the Labour Commissioner who asked the

employer to take back in service the other workmen also, the employer refused to do so. In the meantime the employer suspended another workman by name Shri A. B. Kamble and a false and concocted chargesheet dated 22-12-93 was issued to him. Ex-parte enquiry was held against him in violation of principles of natural justice and by letter dated 25-4-95 he was informed by the employer that the enquiry was completed and the enquiry report would be sent to him in due course of time and accordingly along with letter dated 5-5-95 enquiry report and the findings of the enquiry officer were sent to him. By letter dated 13-6-95 Shri Kamble sought the quashing of the entire proceedings on various grounds but by letter dated 30-6-95 he was informed that the employer had decided to concur with the findings and had proposed to terminate his services and subsequently by letter dated 18-7-95 his services were terminated by way of victimisation for his trade union activities. The Sabha thereafter made a demand on the employer for reinstating Shri Kamble in service and when the employer refused to do so a dispute was raised before the conciliation officer. The conciliation proceedings ended in failure and the Government referred the dispute to this tribunal for adjudication as regards the termination of services of the six workman who are the parties to the present reference. The Sabha challenged the enquiry held against the six workmen as also the order of termination of services of various grounds set out in the statement of claim. The Sabha contended that termination of services of the six workman by the employer is illegal and unjustified and also by way of victimisation and unfair labour practice. The Sabha therefore claimed that the said six workmen are liable to be reinstated in service with full back wages and continuity in service.

3. The employer filed written statement at Exb. 5. The employer stated that the services of the workman were terminated because they had committed acts of major misconduct and not because of their trade union activities or to victimise them. The employer stated that the work of Santa Monica Plant was affected by strike and lock-out for about 20 months and prior to lock-out the workmen had indulged in various acts of indiscipline thereby making it impossible for the employer to run the factory without interruption and therefore lock-out had to be declared. The employer stated that it is not concerned with the question as to whether the workmen became the members of the Sabha or not. The employer denied that they did not like the workers to join in Sabha or that the internal union was acting as per the directions and dictation of the employer. The employer stated that they had taken lead

to negotiate on the charter of demand submitted by Sabha but the negotiations did not materialise because of the adamant attitude of the Sabha. The employer denied that Mr. Lehmann was anti-India, anti-Labour, anti-Sabha or that he has not sympathy for the labour and stated that the negotiations had broken down during the terms of Mr. Hubert. The employer denied that the chargesheet issued to the workmen was on concocted facts. The employer stated that the said workmen who were local leaders were advised from time to time not to indulge in the acts of indiscipline but they did not listen and continued to indulge in the acts of indiscipline and in major acts of misconduct. The employer admitted that the said workmen replied to the chargesheet denying the charges levelled against them and requested for withdrawal of the chargesheets and revocation of suspension and since the employer was not satisfied with the explanation given the said workmen were informed that the enquiries will be conducted against them. The employer denied that the workmen were asked to resign from the membership of the Sabha and to join the union supported by the employer or that they offered to withdraw the suspension orders and drop the chargesheets. The employer stated that the dates of enquiries were published in the local newspapers so as to avoid any allegation that the said workmen were not aware of the dates of enquiries. The employer denied that the enquiries were held illegally or in breach of principles of natural justice. The employer denied that the services of the said workmen were terminated illegally or malafidely or so as to create fear in the minds of the other workers. The employer stated that the demand of the Sabha for reinstating the workmen are not to be considered because the misconduct proved against the workmen was grave. The employer denied that there is any discrimination in taking back in service Mr. S. U. G. Dessai because his case is distinguishable. The employer stated that he was taken back in service because he tendered apology and not because he had left Sabha as alleged. The employer stated that the money was advanced to all the employees who reported for duty and Mr. Dessai happened to be one of them. As regards workman Mr. Kamble the employer denied that enquiry was held against him by ignoring the principles of natural justice. The employer denied that the chargesheets issued to the six workmen named in the reference were based on concocted facts or that the charges were framed to victimise them. The employer stated that considering the nature of the misconduct committed by the said six workmen, the termination of their services is legal and justified. Thereafter the Sabha files rejoinder at Exb. 6.

4. On the pleadings of the parties issues were framed at Exb. 9. The issue No. 1 and 2 were treated as preliminary issues as they were touching the fairness of the enquiry and the validity of the findings of the enquiry officer. After the evidence of the Sabha was recorded on the said preliminary issues the case was fixed for the employer evidence on the said issues. During the pendency of the recording of the evidence, the workmen Shri T. B. Sawant, Shri Vinod Kalangutkar, Shri P. S. Paidarkar, Shri V. G. S. Pissurlekar and Shri Sambhaji Kamble on the one hand and the employer on the otherhand submitted that the dispute between them was amicably settled and they filed the memorandum of settlement. At their request consent award being Award Part I was passed on 1-9-98 in terms of the said memorandum of settlement. However since the dispute regarding the workman Shri C. A. Rodrigues was not settled the evidence of the employer on the preliminary issues was completed. After hearing the parties on the preliminary issues, this Tribunal by findings dated 4-4-2000 held that the domestic enquiry conducted against the workman Shri C. A. Rodrigues is fair and proper and that the charges of misconduct levelled against him are proved. Thus the preliminary issues Nos. 1 and 2 stood disposed of.

5. After the disposal of the preliminary issues as stated above, the case was fixed for the evidence of the workman Shri Rodrigues on other issues. In the meantime the Sabha challenged the findings of this Tribunal on the preliminary issues dated 4-4-2000 before the Hon. High Court of Bombay at Goa Panaji in writ petition No. 392/2000. The said Writ Petition was disposed of by the Hon. High Court by judgement dated 25-1-2001, a copy of which was received by this Tribunal. As per the said judgement the dispute between the workmen Shri Rodrigues and the employer was settled. In the said judgement it is stated that the workmen Shri Rodrigues tendered his unconditional apology for the acts of misbehaviour alleged against him which apology the employer accepted and agreed that the workmen will be deemed to have voluntarily retired from the date of termination of his services. The employer also agreed to pay Rs. 6,00,000/- to the workman Shri Rodrigues in view of his voluntary retirement and in addition to that agreed to pay him Rs. 10,000/- as his advocates fees towards full and final settlement of his claim. The employer further agreed to pay the above said amount within 4 weeks from the date of the order.

6. The employer filed an application dated 12-3-2001 at Exb. 33 stating that after deducting the income-tax payable, two cheques for Rs. 4,19,820/- and Rs. 10,000/- along with the stamped receipt and the

covering letter were sent to the workmen Shri Rodrigues by registered post in compliance with the Hon. High Court order but the same was returned with the remark "refused to accept". The employer stated that since they have fully complied with the Hon. High Court's order the reference does not survive for adjudication and therefore necessary order should be passed. The copy of the said application was served on the workman Shri Rodrigues for his comments. Thereafter the employer filed another application dated 4-5-2001 at Exb. 34 stating that the workman Shri Rodrigues produced a certificate under Section 197 (1) of the Income-Tax Act to the effect that the tax payable on the amount directed to be paid by the Hon. High Court was Rs. 9,000/- only and that accordingly after deducting the said amount of income-tax the employer paid to the workman Shri Rodrigues the total amount of Rs. 6,01,000/- which he has accepted as full settlement. The employer produce along with the application the receipt dated 4-4-2001 issued by the workman Shri Rodrigues. The copy of the said application also was served on the workman Shri Rodrigues. The case was fixed on 7-9-2001 for filing reply by the workman Shri Rodrigues on the said application. On this date the workman Shri Rodrigues appeared and gave his no objection to the application dated 12-3-2001 Exb. 33 filed by the employer wherein the employer had prayed for passing the necessary order because the reference did not survive for adjudication as it concluded in terms of the order of the Hon. High Court.

7. The judgement dated 25-1-2001 passed by the Hon. Bombay High Court at Goa Panaji in Writ Petition No. 392/2000 shows that the dispute between the workman Shri C. A. Rodrigues and the employer was duly settled before the Hon. High Court. As per the settlement the workman Shri Rodrigues is deemed to have voluntarily retired from the date of termination of his service and he is to be paid Rs. 6,00,000/- in view of his voluntary retirement and Rs. 10,000/- towards his advocate's fees in full and final settlement of his claim. The employer has produced the receipt dated 4-4-2001 signed by the workman Shri Rodrigues acknowledging the receipt of the amount of Rs. 6,01,000/- towards full and final settlement of the Hon. High Court's order passed in writ petition No. 392/2000. The workman Shri C. A. Rodrigues has admitted that the reference does not survive and he has given no objection to the application dated 12-3-2001 Exb. 33 filed by the employer

for passing the necessary order. In view of the settlement of the dispute between the workman Shri C. A. Rodrigues and the employer before the Hon. High Court in writ petition No. 392/2000 and in view of the payment of the amount to the workman Shri Rodrigues by the employer ordered to be paid in writ Petition No. 392/2000, the dispute does not exist and consequently the reference as against the workman Shri C. A. Rodrigues does not survive. This fact is also admitted by the workman Shri C. A. Rodrigues. In the circumstances I hold that the reference as against the workman Shri C. A. Rodrigues does not survive because the dispute between him and the employer does not exist for adjudication.

Hence I pass the following order.

ORDER

It is hereby held that the reference as against the workman Shri C. A. Rodrigues does not survive because the dispute between him and the management of M/s. Hindustan Ciba Geigy Ltd., Corlim does not exist for adjudication.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/48/95-LAB

The following Award dated 26/9/2001 in reference No. IT/57/95 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Charles D'Souza, Joint Secretary (Labour).

Panaji, 18th October, 2001.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/57/95

Shri V. P. Bhatt, ... Workman/Party I
H. No. 726/1 Shirfod,
Curchorem-Goa.

V/s

1. M/s. Rajaram Bandekar,
Sirigao Mines Pvt. Ltd.,
Nitin Chambers,
Vasco-da-Gama, Goa.
2. M/s. Anant V. Sarmalkar, ... Employer/Party II
Nitin Chamber,
Vasco-da-Gama, Goa.

Workman/Party I- Represented by Shri K. V. Nadkarni.

Employer/Party II - Represented by Adv. Shri M. S. Bandodkar.

Panaji, Dated: 24-9-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 27-9-1956 bearing No. 28/48/95-LAB referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd., Vasco-da-Gama, and M/s. Anant V. Sarmalkar, Vasco-da-Gama, Goa, in terminating the services of Shri V. P. Bhat, Chemist-cum-Plot Incharge, with effect from 10-6-1991 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/57/95 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workmen-Party I (for short, "Workman") filed his statement of claim at Exb. 6. The facts of the case in brief as pleaded by the workman are that he was

employer with M/s. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd., as a Chemist w. e. f. 14-4-76 and on 1-11-76 his services were transferred to the employer M/s. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd., That his services were confirmed by M/s. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd., w. e. f., 1-5-77 as Chemist at Sirigao Mines. That somewhere in the year 1978-79 M/s. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd., became associated with another firm called M/s. Anant V. Sarmalkar having office at Vasco-da-Gama, Goa who was having export licence to export iron ore to Japan and other Countries and M/s. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd., started exporting its iron ore through M/s. Anant V. Sarmalkar. That in the same year by internal organisational arrangement the Sirsaim Plot which was owned by M/s. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd., was changed overnight and all the sign boards on the said plot were painted as M/s. Anant V. Sarmalkar and since then the said plot functioned as the plot of M/s. Anant V. Sarmalkar. That after effecting the above changes, the services of 3 staff members i. e. of the workman, one Shri Mukund Mahambre and Shri Mohan D. Naik were transferred on loan basis to M/s. Anant V. Sarmalkar at the Sirsaim plot and upon such transfer he continued to work at the same plot on the same post held by him before transferring on loan basis to M/s. Anant V. Sarmalkar. That the services of the workman were taken on loan basis by M/s. Anant V. Sarmalkar for a period of 3 years from 1-10-79. But on the expiry of the said of 3 years the services of the workman were not re-transferred to M/s. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd., and as such he continued to work for further period with M/s. Anant V. Sarmalkar. That though the services of the workmen were loaned to M/s. Anant V. Sarmalkar the terms and conditions of service were the same as were applicable to him when he was working for M/s. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd. That when he was transferred to the plot at Sirsaim the other two employees namely Shri Mukund Mahambre and Shri Mohan Damu Naik, the Asstt. Plot Incharge carried out the duties of supervision and control of loading and unloading operations at the plot and the workman was functioning as chemist in the Laboratory for analysing the ore sample and whatever instructions he received as to loading of barges the same were conveyed to the said Asst. Plot Incharge. That on 27-5-91 the workman received a memorandum dated 27-5-91 from M/s. Anant V. Sarmalkar asking for explanation for taking leave on 22-5-91 to 23-5-91 and accordingly the explanation was submitted by the workman. That he had applied for PL from 27-5-91 to 8-6-91 for performing thread ceremony of his son on 2-6-91 but no reply was received till 26-5-91 and hence

he personally contacted his superior Mr. Hemede the Mines Manager and enquired about his leave application who told him that he could avail the leave applied for by him and accordingly he availed leave from 27-5-91 to 3-6-91. That while he was on leave he received a memorandum on 3-6-91 dated 30-5-91 from M/s. Anant V. Sarmalkar for submitting his explanation for proceeding on leave from 27-5-91 and same memo was replied to by him. That when he reported for duties he received a written message from the Head Office calling him at the head office on 5-6-91. That Mr. N. R. Bandekar informed the workman that he was terminating his services the very moment and that he should not resume his duties but no termination letter was served on him on that day. However, from the said date he was refused employment at the Sirsaim plot i. e. at the place of his work. That thereafter he received a termination letter on 8-7-91 dated 6-6-91 purporting to terminate his services by M/s. Anant V. Sarmalkar though legally they had no legal rights or powers to terminate his services. That at the time of termination of service he was neither paid any legal dues nor he was offered any settlement amount towards his legal dues. The workman contended that the termination of his services by M/s. Anant V. Sarmalkar is illegal and not binding on him. The workman contended that he is entitled to an order from this Tribunal holding that he is in continuous service of M/s. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd., from 10-6-91. The workman prayed that directions be issued to M/s. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd., to reinstate him in service with effect from 10-6-91 with full back wages and continuity in service.

3. The employer M/s. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd., (For short, "company") filed written statement at Exb. 7. By way of preliminary objections the employer stated that the reference is not maintainable. The company stated that the State Government is not appropriate Government for referring the dispute to the Industrial Tribunal and the appropriate Government is the Central Government. The Company stated that the workman Shri Bhat is not a "Workman" within the meaning of Sec. 2 (s) of the Industrial Disputes Act. The company denied that the name of Sirsaim plot was changed to M/s. Anant V. Sarmalkar and stated that at the time of termination of services the workman was working at Sirsaim plot of M/s. Anant V. Sarmalkar which is a different legal entity. The company stated that as per the terms and conditions of the appointment letter they were justified in transferring the workman to Sirsaim plot. The company denied that the services of the workman were transferred on loan basis or that

there was no employer-employee relationship between him and M/s. Anant V. Sarmalkar. The company stated that the services of the workman were properly and legally terminated and he was offered his dues. The company stated that the workman is not entitled to any relief as claimed by him. The employer M/s. Anant V. Sarmalkar (for short, "Firm") filed written statement at Exb. 8. The Firm also raised the preliminary objections that State Government is not appropriate Government for referring the dispute to the Industrial Tribunal and the appropriate Government is the Central Government. The firm also stated that the workman Shri Bhat is not a "Workman" within the meaning of Sec. 2 (s) of the Industrial Disputes Act. The firm stated that at the time of termination of service the workman was working at their Sirsaim plot. The firm stated that as per the terms and conditions of the appointment letter their sister concern namely M/s. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd., was justified in transferring the workman to Sirsaim plot. The firm denied that the services of the workman were transferred on loan basis or that there is no employer-employee relationship between the workman and the firm. The firm stated that the salary of the workman was paid by them. The firm denied that the termination of services of the workman is illegal or void or that the same is without authority. The firm stated that the services of the workman were properly and legally terminated and he was offered his dues. The firm denied that the workman is entitled to any relief as claimed by him. Thereafter the workman filed rejoinder at Exb. 9.

4. On the pleadings of the parties, issues were framed at Exb. 10 and thereafter the case was fixed for recording the evidence of the workman and the evidence of the workman was partly recorded. On 6-9-2001, when the case was fixed for hearing, Shri K. V. Nadkarni, representing the workman and Advocate M. S. Bandodkar, representing the employer submitted that the dispute between the parties was amicably settled and they filed the memorandum of settlement dated 6-9-2001 duly signed by the parties. They prayed that consent award be passed in terms of the settlement. I have gone through the terms of the settlement dated 6-9-2001 filed at Exb. 14 and I am satisfied that the said terms are certainly in the interest of the workman. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 6-9-2001 at Exb. 14.

In the circumstances, I pass the following order.

O R D E R

A. It is agreed between the parties that Mr. V. P. Bhat the employee concerned in the above reference shall be paid a total sum of Rs. 91,600/- (Rupees ninety-one thousand six hundred only) in full and final settlement of all his claim arising out of his employment which shall includes Notice Pay, Gratuity upto date, Bonus/Ex-gratia upto date, Medical Allowances, L. T. C., Pending salary for the months of May, 1991 and June, 1991 and compensation/ex-gratia payment, etc., or any other sum or benefits which can be computed in terms of money.

B. Mr. V. P. Bhat shall accept the said amount mentioned in clause No. "A" in full and final settlement of all his claim arising out of his employment and above reference and further confirm that he shall have no claim of whatsoever nature against M/s. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd. and/or M/s. Anant V. Sarmalkar including any claim of reinstatement or re-employment in those establishments.

C. It is further agreed between the parties that the total amount mentioned in clause "A" payable to Mr. V. P. Bhat shall be paid in four instalments. First instalment of Rs. 10,000/- (Rupees ten thousand only) has been paid on 17-8-2001. The second instalment of Rs. 20,000/- (Rupees twenty thousand only) shall be paid on 7th September, 2001. The third instalment of Rs. 30,000/- (Rupees thirty thousand only) shall be paid on or before 30th October, 2001 and final instalment of Rs. 31,600/- (Rupees thirty one thousand six hundred only) shall be paid on or before 30th November, 2001.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/7/2001-LAB

The following Award dated 29-8-2001 in reference No. IT/5/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of section 17 of the Industrial Dispute Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Charles D'Souza, Joint Secretary (Labour).

Panaji, 12th November, 2001.

**IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI**

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/5/94

Workmen Rep. by ... Workmen/Party I
The President,
Federation of Goa Trade Union,
1st Floor, Mabai Building,
Margao-Goa.

V/s
M/s. Dalmia Resorts International Pvt. Ltd.,
The Old Anchor, Mobor,
Cavelossim-Goa. ... Employer/Party II

Workman/Party I — Represented by Shri Subhash Naik.

None present for Employer/Party II.

Panaji, dated 29-8-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 13-10-1993 bearing No. 28/42/93-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Dalmia Resorts International Pvt. Ltd. (The Old Anchor), Cavelossim, in dismissing the following workmen with effect from 15-9-1992 is legal and justified?

- (1) Shri Cruz Cardozo.
- (2) Shri Cruz Fernandes.
- (3) Shri Domnic Rodrigues.
- (4) Shri Aurelio D'Costa.
- (5) Shri Joaquim Mendes.
- (6) Shri Paul Cruz.
- (7) Shri Joseph Mascarenhas.

If not, to what relief each of the workmen is entitled?"

2. On receipt of the reference, a case was registered under No. IT/5/94 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "union") filed the statement of claim which

is at Exb. 3. The facts of the case in brief as stated by the union are that the Employer/Party II (for short, "employer") is a Five Star Hotel situated at Cavelossim Beach, South Goa and that the said Hotel has around 300 employees. That in the year 1989 the employees formed an union by name "The Old Anchor Dalmia Resort Employees Union and they became the members of the said union and the said union thereafter got itself affiliated to a Federation of Trade Union's called, "The Federation of Goa Trade Union" having its office at Margao-Goa. That in or about February, 1992 the employer suspended Shri Joe Alphonso and Shri Joseph Mascarenhas, the employees of the employer. That Shri Alphonso was the General Secretary and Shri Mascarenhas was the Vice-President of the Union and they were suspended without any valid reason based on a false complaint made by an employee. That the employees objected to the suspension of the said employees and the Federation gave notice to the employer to withdraw the suspension order failing which they would resort to strike on 23rd March, 1992 and since the employer did not withdraw the suspension order the employees went on strike from 23rd March, 1992 which lasted for about 18 days and was withdrawn as some understanding was arrived at between the employer and the employees. That during the period when the employees had gone on strike the employer issued charge sheets to 41 workmen including the workmen who are the parties to the present reference and they were also suspended from service. That a settlement was arrived at the time of withdrawal of strike and the employer decided to withdraw suspensions as well as charge sheets issued to all the employees except 14 workmen and the employer decided to continue enquiries against the said 14 employees. That separate enquiries were held against the said 14 employees but subsequently the employer took back 7 more employees in service by withdrawing the suspension orders and dropping the charges but did not withdraw the suspension orders nor dropped the charges against the 7 workmen who are the parties to the present reference. That after completing the enquiry the employer terminated the services of the workmen who are the parties to the present reference. The union contended that the charge sheets issued to the workmen in the present reference are totally false and the said charge sheets were issued with a view to victimise them for participating in the agitation and the strike called by the union. The union contended that the enquiries conducted against the workmen was in violation of principles of natural justice and no sufficient opportunity was given to them to defend themselves in the enquiry. The union contended that at the time of dismissing the workmen from service the employer did not take into

account their past record which was clean. The union stated that the termination of service of the workmen by the employer w.e.f. 15-9-1992 is illegal and unjustified and therefore they are entitled to be reinstated in service with full back wages and continuity in service.

3. The employer filed written statement which is at Exb. 5. By way of preliminary objections the employer stated that the reference is not maintainable because there is no industrial dispute as defined in section 2K or section 2A of the Industrial Disputes Act, 1947. The employer stated that on 13th March, 1992 Mr. Michael Francisco D'Souza, the Airport Representative of the employer was severally assaulted by Mr. Joseph Mascarenhas and Mr. Joe Nery Alphonso. That a complaint was lodged and on enquiry of the facts and circumstances of the case the said employees were placed under suspension pending issuing of charge sheets and holding an enquiry. That being aggrieved by the said suspension orders, some of the workers with the assistance of outsiders resorted to obstructing the managerial, supervisory and administrative staff and also by gathering at the gate of the hotel premises they stopped the vehicles of the guests, forced and compelled them to get down at the gate and they were threatened and intimidated. That the striking workers entered the hotel premises and compelled the willing employees to leave the hotel premises and as a result of riotous and disorderly atmosphere tension and fear prevailed in the hotel premises. That the striking workers also resorted to throwing stones at the guest's apartments in the hotel and the workmen who are the parties to the present reference were also among the said striking workers who were indulging in the above said illegal activities. That the employer therefore issued charge sheets to each of the employees and they were asked to submit their explanation and thereafter enquiry was held against each workmen individually and one Shri Prasad was appointed as the Inquiry Officer. That the enquiry was conducted by following the principles of natural justice and the workmen were given full opportunity to defend themselves in the enquiry. That on completion of the enquiry the I.O. submitted his findings to the disciplinary authority holding the workmen guilty of the charges levelled against him. That the disciplinarian authority examined the report of the Inquiry Officer together with the records of the enquiry proceedings and other connected documents including the past record of the workmen. That since the charges were found to proved were of grave and serious nature the only action warranted was that of dismissal of the workmen from service. The employer stated that the case of each and every workman was

dealt with on its own merit and there was no discrimination. The employer denied that the services of the workmen were terminated by way of victimisation for their alleged trade union activities. The employer denied that the enquiry was held against the workmen in violation of the principles of natural justice or that no proper opportunity was given to the workmen in defending themselves in the enquiry. The employer denied that the findings of the Inquiry Officer were perverse or the action of the employer of dismissing the workmen from service is illegal or unjustified. The employer stated that since the termination of the services of the workmen is legal and justified they are not entitled to any relief as claimed by them. Thereafter the union filed rejoinder at Exb. 6.

4. On the pleadings of the parties, following issues were framed at Exb. 7.

1. Whether the Party II proves that the reference is not maintainable for the reasons stated in para. 1(a) to 1(d) of the Written Statement?
2. Whether the Party I proves that the domestic enquiry held against the workmen is in violation of the principles of natural justice?
3. Whether the charge of misconduct levelled against the workmen is proved to the satisfaction of the Tribunal by acceptable evidence?
4. Whether the Party I proves that the termination of the services of the workmen by the Party II w.e.f. 15-9-1992 is illegal and unjustified?
5. Whether Party I proves that the termination of services of the workmen by Party II is by way of victimisation for Trade Union activities?
6. Whether the Party I proves that the punishment of dismissal is disproportionate and unjust ?
7. Whether Party II proves that the dispute as regards workmen Shri Paul Cruz and Shri Joseph Mascarenhas does not exist and hence the reference as regards the said workman is maintainable?
8. Whether the workmen are entitled to any relief ?
9. What Award?

5. The issues Nos. 1, 2 and 7 were tried as preliminary issues. The employer was earlier presented by Adv. Shri Bandodkar. However, he withdrew his appearance from

the case on behalf of the employer after giving proper notice to the employer. Since none appeared on behalf of the employer inspite of the opportunities given, the evidence of the employer on preliminary issues was closed. After recording the evidence of the workmen, this Tribunal by its findings dated 7-4-2000 held that the employer has failed to prove that the entire reference is not maintainable or that the reference is not maintainable as against the workmen Paul Cruz, and Joseph Mascarenhas and consequently the issues Nos. 1 and 7 were answered in the negative. By the same order this Tribunal also held that the domestic enquiry held against Shri Cruz Cardoz, Shri Cruz Fernandes, Shri Domnic Rodrigues, Shri Aurelio D'Costa, Shri Joaquim Mendes, Shri Paul Cruz and Shri Joseph Mascarenhas is not fair and proper. The issue No. 2 was therefore answer in the affirmative and the enquiry conducted against the above said workmen was set aside. Thus the preliminary issue Nos. 1, 2 and 7 stood disposed off.

6. Since the enquiry was set aside, the employer was given opportunity to prove the charges of misconduct against the workmen before this Tribunal by leading evidence. However, the employer remained absent and did not avail of the opportunity given. This being the case the evidence of the employer was closed on 5-6-2000. Shri Subhash Naik, representing the union submitted that he does not want to lead evidence on behalf of the workmen/union.

7. My findings on the remaining issues are as follows:

Issue No. 3 : Does not arise.

Issue No. 4 : In the affirmative.

Issue No. 5 : In the negative.

Issue No. 6 : Does not arise.

Issue No. 8 : As per para. 12 below.

Issue No. 9 : As per order below.

REASONS

8. Issue No. 3: This issue is on the point whether the misconducts alleged against the workmen are proved by the employer by leading sufficient evidence in the enquiry. This issue was framed because the union had contended that the findings of the enquiry officer are perverse because they are not based on the evidence on record in the enquiry. The question of giving findings on this issue does not arise because the enquiry itself which was conducted against the workmen has been set aside. The findings on this issue would have required to be given only if it was held by this Tribunal that the enquiry conducted against the workmen is fair and

proper. In the present case the enquiry has been set aside and consequently the findings of the enquiry officer which are based on the enquiry also stand set aside. This being the case the question of giving findings on the issue No. 3 does not arise and I hold so accordingly.

9. *Issue No. 5:* The burden was on the union to prove that the termination of service of the workmen by the employer is by way of victimisation for their trade union activities. The union had to prove this issue by leading sufficient evidence. However, inspite of the opportunity given the union has not led any evidence on this issue or for that matter except for the evidence on preliminary issues, the union has not led evidence on any other issues. Therefore in the absence of any evidence from the union it cannot be held that the termination of service of the workmen is by way of victimisation. In the circumstances I answer the issue No. 5 in the negative.

10. *Issue No. 4:* This issue pertains to the dismissal/termination of service of the workmen by the employer w.e.f. 15-9-1992. The contention of the union is that the dismissal/termination is illegal and unjustified. The employer dismissed the workmen from service on the ground that they had committed various acts of misconduct such as forcibly entering the factory premises, terrorising the staff, assaulting the co-employee, damaging and destroying the property, threatening the loyal workers, instigating other workers not to report for duties etc., as can be seen from the charge sheets which are on record and according to the employer the said charges of misconduct were proved in the enquiry conducted against them, as per the findings given by the Inquiry Officer. As mentioned earlier, this Tribunal by findings dated 7-4-2000, set aside the enquiry conducted against the workmen and consequently the findings of the Inquiry Officer also stood set aside. The employer was given opportunity to prove the charges of misconduct against the workmen by leading evidence before this Tribunal. The employer however remained absent and consequently the evidence of the employer was closed on 5-6-2000. Thus there is no evidence from the employer before this Tribunal to prove the charges of misconduct against the workmen. The employer had dismissed the workmen from service because according to the employer, the workmen had committed various acts of misconduct. Now, since the charges of misconducts are themselves not proved, the dismissal/termination of service of the workmen becomes illegal and unjustified. In the circumstances, I hold that

the union has succeeded in proving that termination of service of the workmen by the employer w.e.f. 15-9-1992 is illegal and unjustified. I, therefore answer the issue No. 4 in the affirmative.

11. *Issue No. 6:* In my view the question of giving findings on this issue would have arisen if charges of misconduct levelled against the workmen were held to be proved. This is because whether the punishment imposed is disproportionate or unjust is related to the proved misconduct. In the present case the employer has not at all proved the charges of misconduct against the workmen. This being the case, the question of deciding whether the order of dismissal is disproportionate or unjust does not arise. It has been held by me that the termination of service of the workmen is illegal and unjustified. I, therefore answer the issue No. 6 accordingly.

12. *Issue No. 8:* This issue pertains to the relief to be granted to the workman. It is well settled that once the termination is held to be illegal and unjustified, the normal rule is that the workman is entitled to reinstatement in service with full back wages, unless there are reasons which do not warrant reinstatement or full back wages. In the present case charges of misconduct have not been proved against the workmen. It has been held by me that the dismissal/termination of service of the workman is illegal and unjustified. There is no evidence from the employer to show that the past record of the workmen was not good. There is also no evidence on record to show that the workmen were or are in gainful employment after their dismissal from service. I, therefore do not find any reason to deviate from the normal rule stated above. In my view therefore, it is just and proper to award reinstatement to the workmen with full back wages. I, therefore hold that the workmen are entitled to reinstatement in service with full back wages.

Hence, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Dalmia Resorts International Pvt. Ltd. (The Old Anchor), Cavelossim, in dismissing the workmen Shri Cruz Cardozo, Shri Cruz Fernandes, Shri Domnic

Rodrigues, Shri Aurelio D'Costa, Shri Joaquim Mendes, Shri Paul Cruz and Shri Joseph Mascarenhas w.e.f. 15-9-1992 is illegal and unjustified. The said workmen are ordered to be reinstated in service with full back wages and other consequential benefits and continuity in service.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/7/2001-LAB

The following Award dated 25-9-2001 in reference No. IT/22/2001 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of section 17 of the Industrial Dispute Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.
Charles D'Souza, Joint Secretary (Labour).
Panaji, 30th October, 2001.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/22/2001.

Workmen,
Rep. by Gomantak Mazdoor Sangh,
Ponda-Goa. ... Workman/Party I

V/s

M/s. Salgaonkar Medical Research Centre,
Chicalim-Goa. ... Employer/Party II

Workmen/Party I — Represented by Shri P. Gaonkar.

Employer/Party II — Represented by Adv. Shri M. S. Bhandodkar.

Panaji, dated: 20-9-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 23-4-2001 bearing No. IRM/CON/VSC/41/2000/1940 referred the following dispute for adjudication of this Tribunal.

(I) "Whether the following Charter of Demands served on M/s. Salgaonkar Medical Research Centre, Chicalim-Goa, by Gomantak Mazdoor Sangh, Ponda-Goa, vide their letter dated 11-11-1998, on behalf of the workmen employed therein, is legal and justified?

DEMANDS:

(1) Scale of Pay:-

Grade No. I : 1000-60-1300-70-1650-80-2050-90-
-2500-95-2975.
Grade No. II : 1100-65-1425-75-1800-85-2225-95-
-2780-100-3200.
Grade No. III : 1200-70-1550-80-1960-90-2400-100-
-2900-105-3425.
Grade No. IV : 1300-75-1700-85-2125-95-2600-105-
-3125-110-3675.
Grade No. V : 1500-80-1900-90-2350-100-2850-110-
-3400-120-4000.

(2) Flat Rise:-

Union demands that all the workmen shall be given flat rise at the rate of Rs. 500/- per workman.

(3) Seniority Increment:-

Union demands that the workmen should be given the seniority increment as mentioned below:-

| | |
|---------------------------------|---------------------|
| Service upto 3 years | : One increment. |
| Service from 4 to 7 years | : Two increments. |
| Service from 8 to 10 years | : Three increments. |
| Service from 11 to 14 years | : Four increments. |
| Service from 15 years and above | : Five increments. |

(4) Variable Dearness Allowance:-

Union demands that the present rate of V.D.A. is very less and hence the same should be paid at the revised rate of Rs. 3.00 per point rise beyond 1700/- (1960-100) and the present rate of V.D.A. should be added to fixed dearness allowance. The computation of V.D.A. shall be paid quarterly based on average Consumer Price Index of proceeding quarter.

(5) Canteen Subsidy:-

Union demands that Canteen subsidy shall be paid at the rate of Rs. 300/- per month, per workman.

(6) House Rent Allowance:-

Union demands the House Rent Allowance should be paid at the revised rate of 25% of Basic and D.A. as the cost of accommodation is very high in Goa being Tourist State.

(7) Washing Allowance:-

Union demands that washing allowance should be paid at the revised rate of Rs. 250/- per month to staff nurse and Rs. 150/- per month for other employees.

(8) Leave:-

Union demands that all the workmen should be given leave on the following basis:-

(a) Earned Leave:- Union demands that all the workmen should be given earned leave at the rate of 35 days per year, with accumulation upto 120 days, and the workmen shall be allowed to take leave 10 times in a year.

(b) Sick Leave:- Union demands that the workmen who are outside the purview of Employees State Insurance Scheme should be given 15 days sick leave, per year.

(c) Casual Leave:- Union demands that all the workmen should be given casual leave at the rate of 15 days per year.

(9) Bonus/Ex-Gratia:-

Union demands that all the workmen should be paid Bonus/Ex-gratia at the revised rate of 20% on actual earning, during the currency of this settlement.

(10) Education Allowance:-

Union demands that all the workmen should be paid education allowance at the rate of Rs. 250/- per month, per workman, to meet the increase in expenses towards the education of their children.

(11) Confirmation of Service:-

Union demands that those workmen who have worked for more than 240 days should be confirmed.

(12) Leave Travel Assistance:-

Union demands that Leave Travel Assistance should be paid at the rate of Rs. 2,000/- per year.

(13) Travelling Allowance:-

Union demands that those workmen who are not provided with transport facilities, should be paid travelling allowance at the rate of Rs. 350/- per month.

(14) Medical Allowance:-

Union demands that Medical expenses of the workmen and his dependent should be reimbursed by the management.

(15) Retirement Age:-

Union demands that retirement age should be raised to 60 years.

(16) Loan:-

Union demands that loan of Rs. 2,500/- should be granted to the employees for purchase of household articles or for house repairs or marriage of his/her family members, etc.

(II) If not, to what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/22/2001 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workmen/Party I (for short, "Union") filed statement of claim at Exb. 4 in support of the demands raised by it against the Employer/Party II (for short, "employer") vide its letter dated 11-11-1998. The Union contended that the demands raised by it are fair, legal and justified. Thereafter the case was fixed for filing of the written statement by the employer. However, before the written statement was filed, the parties submitted that the dispute between them was amicably settled and they filed the terms of settlement dated 13-9-2001 at Exb. 5. Both the parties prayed that award be passed in terms of the said settlement. I have gone through the memorandum of settlement dated 13-9-2001 filed by the parties which settlement is duly signed by them and I am satisfied that terms of the settlement contained in the memorandum of settlement are certainly in the interest of the workmen. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 13th September, 2001 Exb. 5.

ORDER

It has been agreed between the parties that this settlement will be applicable to all those workmen who are on the permanent rolls of the Centre as on the date of signing this settlement.

1. Grade and Scales:-

It has been agreed between the parties that the existing Grades and Scales of pay for different categories of workmen shall continue.

2. Flat Increase:-

All workmen who are on the permanent rolls of the Centre as on 1-10-1998 will be given flat increase in that basic depending upon the grade as indicated below:

- | | |
|----------------------|---------------|
| (a) Grade IV, V & VI | : Rs. 100.00. |
| (b) Grade VII & VIII | : Rs. 75.00. |
| (c) Grade IX, X & XI | : Rs. 50.00. |

3. Fitment Formula:-

The above flat rise will be merged with the old basic i.e. the basic as on 30-9-1998 of each workman according to their grades and will be fitted in the Grade and Scale. Those employees whose basic salary falls between the two stages of pay scale will be fitted to the next higher stage of that scale.

4. Seniority Increment:-

It has also been agreed between the parties to release seniority increments on the following basis.

- (i) Those workmen who have completed four years of service as a permanent workman as on 30-9-1998 will be given one seniority increment.
- (ii) Those workmen who have completed eight years of service as a permanent workman as on 30-9-1998 will be given two seniority increment.
- (iii) Those workmen who have completed twelve years of service as a permanent workman as on 30-9-1998 will be given three seniority increment.

After fixing the basic salary, as per the fitment formula referred in clause 3 above and adding seniority increment as mentioned in clause 4 to the existing basic the workmen will be draw new revised basic so arrived with effect from 1-9-1998.

5. Annual Increment:-

Further, those employees who will be completing one year continuous service on 31-3-1999 will be entitled to annual increment from 1-4-1999 and thereafter the annual increment will fall due on April 1, every year.

6. Variable Dearness Allowance:-

It has also been agreed that the present V.D.A. formula will continue without any change.

7. House Rent Allowance:-

It has been agreed to revise the present house rent allowance of 12% of basic to 15% of basic. However, the minimum H.R.A. will be Rs. 65.00 p. m.

It has also been agreed that those employees who have been allotted quarters at the Centre will not be eligible for house rent allowance.

8. Washing Allowance:-

Those workmen who have been presently paid Washing Allowance of Rs. 25.00 per month will now be paid at the rate of Rs. 35.00 per month.

9. Uniform Cloth Allowance:-

Those workmen who have been presently paid uniform cloth allowance of Rs. 25.00 per month will now be paid at the rate of Rs. 35.00 per month.

10. Medical Allowance:-

The Medical Allowance will be revised as follows:

- (i) Employees drawing monthly salary of Rs. 1,500.00 and less per month will be reimbursed medical expenses upto a maximum of Rs. 800.00 per annum.
- (ii) Employees drawing monthly salary of Rs. 1,501.00 and above per month will be reimbursed medical expenses upto a maximum of Rs. 900.00 per annum.

Note:- Monthly salary means basic pay plus Variable Dearness Allowance drawn in the month of January every year.

It has also been agreed that this settlement is in full and final settlement of all the demands of the workmen either in the charter of demands or otherwise and it is clearly understood that during the currency of the settlement no demands involving financial burden on the Centre will be agitated by the workmen.

It is further agreed that in respect of any of the matter covered by this settlement, the Management becomes obliged in law by reason of any new amendment to the existing enactment or issuance of notification, directive, etc. The workmen will be entitled to only what is expressly provided under the settlement or they are

obliged to pay in law whichever is higher but not both. It has also been agreed that any of the items which are not covered under this settlement but covered under the earlier settlement dated 10-12-1993 will be continued to be enjoyed as unaltered.

It has been agreed that during the operation of the settlement the workmen will at all times have re-course to legal means for striving to secure amelioration of the service conditions of the workmen and would not resort to direct action or agitation in any form whatsoever, unless all other avenues for settlement are exhausted.

11. Settlement:-

- a) It has been agreed between the parties that this settlement will be applicable only to those permanent workmen who are on the rolls of the Centre on the date of signing of this settlement and also to those workmen who have been superannuated from service or expired between 1-10-1998 and the date of signing of this settlement.
- b) Both the parties agree that the settlement will be operative and binding, effective from 1-10-1998 to 31-12-2001 and will continue to be in force unless it is terminated as per the Industrial Disputes Act, 1947.
- c) The arrears arising due to revision in salaries/wages for the period from 1-8-1998 till the date of signing of this settlement will be paid within one month of signing of this settlement after deducting of tax at source.
- d) It has been agreed between both the parties that this settlement shall be submitted before the Hon'ble Industrial Tribunal for consent award in IT/22/2001.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/7/2001-LAB

The following Award dated 17th August, 2001 in reference No. IT/50/97 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of section 17 of the Industrial Dispute Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Charles D'Souza, Joint Secretary (Labour).

Panaji, 5th November, 2001.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
PANAJI-GOA

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/50/97

Shri Raghuvir Sitaram Parsekar.

Menezes Wado, Bastora,

Bardez-Goa.

... Workman/Party I

V/s

The President,

Comunidade of Mapusa,

Near Milagres Church,

Mapusa, Bardez-Goa.

... Employer/Party II

Workman/Party I represented by Adv. Shri P. J. Kamat.

Employer/Party II represented by Adv. Shri Rohit Lobo.

Panaji, dated : 17-8-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 12-8-1997 bearing No. IRM/CON-MAP/(2)/96/4310 referred the following dispute for adjudication of this Tribunal.

1) Whether the action of the Comunidade of Mapusa, Mapusa-Goa, in terminating the services of Shri Raghuvir Sitaram Parsekar, Watchman, with effect from 1-11-1995, is legal and justified?

2) If not, to what relief the workman is entitled?

2. On receipt of the reference the case was registered under No. IT/50/97 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/Party I (for short workman) filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was appointed as a watchman by the Employer/Party II (for short employer) vide appointment letter dated 12-11-1992. That on or about 26-10-1995 the managing committee of the employer informed the workman that they had decided to engage security contractors for watch and ward duty w.e.f. 1-11-1995 and therefore

he would be required to work as a watchman of the contractor from 1-11-1995 and in case he not agree to the same his services would be terminated from 1-11-1995. That since he did not agree to join as Contractors security the employer terminated his services from 1-11-1995 vide letter dated 26-10-1995. That before terminating his services he was not given one months notice nor was paid wages in lieu of one months notice nor was paid the retrenchment compensation. That after termination of his services he made a demand on the employer vide letter dated 29-12-1995 but the employer did not comply with the demands made by him within the time specified in the letter. That a copy of the said demand letter was endorsed to the Asst. Labour Commissioner, Mapusa who took up the matter and held conciliation proceedings. However no settlement could be arrived at and the conciliation ended in failure resulting into the present dispute. The workman claimed that he is entitled to reinstatement in service with full back wages and continuity in service.

3. The employer filed written statement at Exb. 6. By way of preliminary objections the employer contended that the reference made by the Government is not maintainable for the reasons mentioned in paras. (a) to (e) of the written statement. The employer stated that the letter of appointment dated 12-11-1992 issued to the workman was a nullity and bad in law as the person who signed the said letter of appointment had no authority to appoint any person against any regular vacancy or as a permanent employee. The employer stated that the appointment of the workman as a watchman by its clerk vide letter dated 12-11-1992 was a irregular appointment and it was in excess of the powers vested in the managing committee or its clerk acting under specific instructions of the managing committee. The employer stated that since the earlier managing committee had appointed watchman wrongfully and their appointments were unauthorised, the new managing committee for the period 1995-97 chose to appoint a security contractor for the job of security and therefore option was given to the workman and to the other watchman either to join the said security contractor or otherwise their services would be dispensed with. The employer stated that since the workman did not accept the said offer of joining the security contractor, the managing committee had no other alternative but to dispense with the workman on 31-10-1995. The employer stated that the provisions of the Industrial

Disputes Act, 1947 are not applicable to the employer as it is not an Industry under the Industrial Disputes Act, 1947 and therefore the employer was not bound or required to comply with the provisions of the said Act. The employer denied that dispensing the workman was illegal or unjustified or that its action of discontinuing the services of workman is illegal and bad in law. The employer denied that the workman is entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties issues were framed at Exb. 8 and thereafter the case was fixed for the evidence of the workman. Accordingly the workman led his evidence and thereafter the case was fixed for the evidence of the employer. At the stage when the evidence of the employer was partly recorded the parties submitted that they have arrived at an amicable settlement and they filed the consent terms dated 2-7-2001 at Exb. 12. Both the parties prayed that award be passed in terms of the settlement dated 2-7-2001. I have gone through the consent terms which are filed by the parties at Exb. 12. The said consent terms are duly signed by the parties and I am satisfied that the terms of the settlement are certainly in the interest of the workman. I, therefore accept the submissions made by the parties and pass the consent award in terms of the consent terms dated 2-7-2001 Exb. 12.

ORDER

1. It is agreed between the parties that the Management of the Comunidade of Mapuca-Goa has reinstated the workman Shri Raghuvir Parshekar as a Peon with effect from 1st July, 2001 with continuity in service and other benefits.
2. It is, further agreed between the parties that Management of Comunidade of Mapusa-Goa, shall pay to the workman an amount of Rs. 20,000/- (Rupees twenty thousand only) in full and final settlement of all the arrears of back wages for the period from October, 1995 to June, 2001.
3. It is also agreed that, on receipt of the above amount, the workman shall not raise any further claims against the said Comunidade of Mapusa-Goa, towards the arrears of his back wages for the period from October, 1995 to June, 2001.

4. It is agreed between the parties that the payment in clause (2) above will be made on or before 15th July, 2001 failing which an interest at the rate of 18% shall be payable to the workman.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. MISC/Pub-Award/Lab/2001

The following Award dated 20-8-2001 in Reference No. IT/23/2000 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Charles D'Souza, Joint Secretary (Labour).

Panaji, 8th November, 2001.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/23/2000

Shri Lal Bahadur Brist,
Rep. by the Secretary,
Goa Trade and Commercial
Workers Union, Velho Bldg.,
2nd Floor, Panaji-Goa.

...Workman/Party I

V/s

Shri Shrikant Naik,
Tarchi Bhatt, Siolim,
Bardez-Goa.

... Employer/Party II

Workman/Party I represented by Adv. Shri Suhas Naik.

Employer/Party II represented by Adv. Shri P. J. Kamat.

Panaji, dated: 20-8-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 14-2-2000 bearing No. IRM/CON-MAP/(7)/98/823 referred the following dispute for adjudication of this Tribunal.

- 1) Whether the action of the employer, Shri Shrikant Naik, Siolim, Bardez-Goa, in refusing employment to Shri Lal Bahadur Brist, Watchman, with effect from 5-9-1997, is legal and justified?

- 2) If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. IT/23/2000 and registered A./D. notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/Party I (for short workman) filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that he was working as a watchman with the Employer/Party II (for short employer) on his farm situated at Dhargal, Deulwada, Pernem-Goa initially on monthly salary of Rs. 700/- and in the year 1995 the same was increased to Rs. 1,500/- p. m. That he worked with the employer continuously for 18 years as a watchman and on 5-9-1997 he was refused employment by the employer without assigning any reasons. That thereafter he approached the union and the said union raised the dispute before the employer vide letter dated 7-1-1998 regarding refusal of employment to him. That the union also requested the Asstt. Labour Commissioner, Mapusa to intervene in the matter and accordingly conciliation proceedings were initiated by the Asst. Labour Commissioner, Mapusa. That the employer offered to pay Rs. 10,000/- to the workman in the conciliation proceedings and the same offer was recorded in the minutes of the conciliation proceedings held on 25-5-1997. That subsequently the employer did not adhere to the offer made by him and remained absent as a result of which failure was recorded

on 25-5-1997 and the failure report dated 15-4-1999 was submitted to the Government. The workman contended that the action of the employer in refusing employment to him is illegal and unjustified and the same is in violation of the provisions of section 25-F of the Industrial Disputes Act, 1947. The workman contended that before refusal of employment to him no enquiry was conducted nor the mandatory provisions of the law were complied with nor he was issued any warning, show cause notice or chargesheet. The workman contended that since the refusal of employment is illegal and unjustified he is entitled to reinstatement in service with full back wages and continuity in service.

3. The employer filed written statement at Exb. 4. By way of preliminary objection the employer stated that the reference is not maintainable for the reasons stated in paragraphs (a) to (e) of the written statement. The employer stated that the property was jointly owned by several heirs including him and the workman was engaged as a watchman by the joint owners to guard the said property. The employer stated that on or about 14-2-1997 the workman had gone to his native place and in his absence there was a separation of the property and the employer came into possession of the part of the said property. The employer stated that on account of separation of the property the employer and the other owners did not find it necessary to have a watchman to guard the said property as they decided to guard their own part of the property personally, and this fact was made known to the workman on 5-9-1997 when he returned back from his native place. The employer stated that the workman was a domestic servant of the joint family and therefore the dispute raised by him cannot be an industrial dispute and also the employer is not an industry as defined under the Industrial Dispute Act, 1947. The employer stated that the union has no locus standi to file claim statement on behalf of the workman as the union is not a party to the reference. The employer denied that the farm belongs to him and his family or that he is managing and governing the entire business of the farm and derives huge profits by selling the farm products in the open local market. The employer denied that the workman worked as a watchman with the employer continuously for 18 years and that he was refused employment on 5-9-1997 without assigning any reasons. The employer admitted that conciliation proceedings were held by Asst. Labour Commissioner, Mapusa but denied that the employer agreed to pay to the workman before the Asst. Labour Commissioner an amount of Rs. 10,000/-. The employer stated that as a gesture of goodwill and considering the long association of the workman with the family of the employer, he offered to pay an amount

of Rs. 10,000/- to the workman which was to be adjusted towards the advance taken by the workman amounting to Rs. 8,800/- but said offer was not accepted by the workman and hence failure was recorded on 15-4-1999. The employer denied that the refusal of employment to the workman from 5-9-1997 is illegal and unjustified or that before refusal of employment to the workman the employer floated to mandatory provisions laid down under the statute. The employer stated that since the workman was a domestic servant the question of holding any enquiry or issuing warning, memo, show cause notice or charge sheet to him did not arise. The employer denied that the workman is entitled to any relief as claimed by him and stated that the reference is liable to be rejected. The workman thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties issues were framed at Exb. 8 and thereafter the case was fixed for recording the evidence of the workman. Several opportunities were given to the workman to lead evidence on his behalf. On 30-7-2001 when the case was fixed for recording the evidence of the workman, Adv. Shri Suhas Naik representing the workman submitted that notice was given to the workman on his last known address informing him that the case was fixed for recording his evidence and that inspite of the said notice the workman has failed to contact him and therefore he is not able to lead evidence of the workman in the matter. The records of the case showed that the case had been adjourned several times at the request made on behalf of the workman. It was therefore evident that the workman is not interested in pursuing further with the matter and therefore his evidence was closed on 30-7-2001. Adv. Shri P. J. Kamat representing the employer submitted that since the evidence of the workman is closed the employer also does not wish to lead any evidence in the matter. Thus there is no evidence from the employer to show that the reference is not maintainable on the grounds set up by the employer in the written statement.

5. In the present case the dispute is referred by the Government at the instance of the workman as it is his case that the employer illegally refused employment to him w.e.f. 5-9-1997. The Bombay High Court, Panaji Bench in the case of V. N. S. Engineering Services V/s. Industrial Tribunal, Goa, Daman and Diu and another reported in FJR Vol. 71 page 393 had held that there is nothing in the Industrial Disputes Act, 1947 that indicates a departure from the general rule that he who approaches a Court for a relief should prove his case, i.e. the obligation to lead evidence to establish an allegation, the test being that he who does not lead

evidence must fail. The High Court further held that the provisions of rule 10-B of the Industrial Disputes (Central Rules 1957) which requires the party raising a dispute to file his statement of demand relating only to the issue in the order of reference for adjudication within 15 days from the order of reference and forward copies to the Opp. Parties involved, clearly indicates that the party who raises the Industrial Dispute is bound to prove the contention raised by him and an Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case i.e. in the case of V. K. Raj Industries V/s. Labour Court I and others reported in 1991 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the provisions underlining the said Act are applicable. The Allahabad High Court has further held that it is well settled that if a party challenges the validity of an order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or to produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

6. In the present case since the dispute was raised by the workman and at his instance that the Government made the present reference, as per the principles laid down by the Bombay High Court and the Allahabad High Court in the above referred cases, the burden was on the workman to prove that the action of the employer

in refusing employment to him w.e.f. 5-9-1997 is illegal and unjustified. The workman was given several opportunities to lead evidence but he did not do so. The records of the proceedings as well as the submissions made by Adv. Shri Suhas Naik representing the workman shows that the workman is not interested in pursuing further with the matter. There is no material before me to hold that the action of the employer in refusing employment to the workman is not legal and justified. In the absence of any evidence from the workman the reference cannot be answered in his favour. In the circumstances, I hold that the workman has failed to prove that the refusal of employment to him by the employer w.e.f. 5-9-1997 is illegal and unjustified.

Hence I pass the following order.

ORDER

It is hereby held that the action of the employer Shri Shrikant Naik, Siolim, Bardez-Goa, in refusing employment to the workman Shri Lal Bahadur Brist, watchman w.e.f. 5-9-1997 is legal and justified. It is hereby further held that the workman Shri Lal Bahadur Brist is not entitled to any relief.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.